



DEPARTMENT OF STATE

Washington, D.C. 20520

NSC UNDER SECRETARIES COMMITTEE

Executive Registry

76-5696/2

CONFIDENTIAL
NSC-U/N-184

December 7, 1976

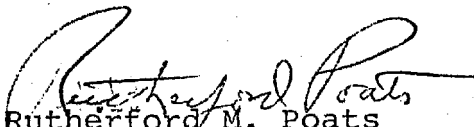
TO: The Deputy Secretary of Defense
 The Assistant to the President for
 National Security Affairs
 The Director of Central Intelligence
 The Chairman of the Joint Chiefs of Staff
 The Deputy Secretary of the Treasury
 The Deputy Attorney General
 The Under Secretary of the Interior
 The Under Secretary of Commerce
 The Under Secretary of Transportation
 The Director, Office of Management and
 Budget
 The Chairman, Council on Environmental
 Quality

SUBJECT: United States Withdrawal from ICNAF

REF: NSC-U/DM-141 of December 3, 1976

Because the ICNAF Conference is being held from December 1-9, the Chairman discussed the situation with General Scowcroft and they agreed that it would be impractical to get the President's decision in time to be useful to the delegation at the current meeting. Consequently, the option involving making no immediate decision, i.e. Option B, was chosen and the delegation has been instructed to participate fully in the meeting on an ad referendum basis acting along the lines of Option B. The outcome will be reviewed next week on the basis of the report of the chairman of the US delegation, looking to a decision on US withdrawal prior to the December 31 deadline.

State Dept. review completed


Rutherford M. Poats
Acting Staff Director

EXECUTIVE SECRETARIAT

Routing Slip

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4	DDS&T				
5	DDI		X		
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SUSPENSE _____
Date

Remarks:

Executive Secretary
8 December 1976

Date

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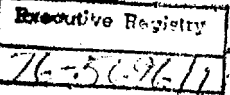
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Washington, D.C. 20520

NSC UNDER SECRETARIES COMMITTEE



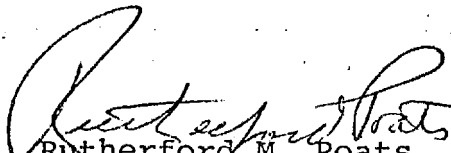
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NSC-U/DM-141

December 6, 1976

TO: The Deputy Secretary of Defense
The Assistant to the President for
National Security Affairs
The Director of Central Intelligence
The Chairman of the Joint Chiefs of Staff
The Deputy Secretary of the Treasury
The Deputy Attorney General
The Under Secretary of the Interior
The Under Secretary of Commerce
The Under Secretary of Transportation
The Director, Office of Management and
Budget
The Chairman, Council on Environmental
Quality

SUBJECT: United States Withdrawal from the
International Convention for the
Northwest Atlantic Fisheries (ICNAF)

The Chairman has forwarded the attached
memorandum to the President. A copy is provided
for your information.


Rutherford M. Poats
Acting Staff Director

Attachment:

As stated

*Belong on
9 Dec fund*

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THE DEPUTY SECRETARY OF STATE
WASHINGTONNSC UNDER SECRETARIES COMMITTEECONFIDENTIAL
NSC-U/DM-141

December 3, 1976

MEMORANDUM FOR THE PRESIDENT

Subject: United States Withdrawal from
the International Convention
for the Northwest Atlantic
Fisheries (ICNAF)

Are U.S. national interests, as they are affected by the implementation of the Fishery Conservation and Management Act of 1976, better served by U.S. withdrawal from ICNAF on December 31, 1976 or by a decision to remain in ICNAF through December 31, 1977?

U.S. actions since the passage of the Fishery Conservation and Management Act of 1976 (P.L. 94-265) in April have thus far protected both of the policy choices expressed above. A final decision on U.S. withdrawal, however, must be made by December 31, and could be made sooner if desirable. In either case, guidance is needed for the U.S. Delegation to the December 1-9 Special Meeting of the ICNAF Commission at which the 18 member-nation Commission will make decisions that will be binding on the U.S. if the U.S. remains in ICNAF for 1977.

The Fishery Conservation and Management Act of 1976, inter alia, asserts U.S. jurisdiction and exclusive management authority over all living marine resources out to 200 miles off our coasts. It also requires the prompt renegotiation of any existing fishery treaty that is inconsistent with the purposes, policy or provisions of the Act. In this connection, the House/Senate Conference Committee report on the Act stated that it was the opinion of the Committee that the United States should withdraw from the International Convention for Northwest Atlantic Fisheries (ICNAF) before March 1, 1977, if the treaty has not been renegotiated to conform with the Act by that date. Most east coast fishing interests support withdrawal

this year
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Passage of the Act requires, however, a transition from the present regime of international management of the resources to an exclusive U.S. management regime. There are serious problems involved in such a transition which could be affected by our withdrawal from ICNAF and which require careful consideration before a decision is made on the timing of that withdrawal.

Accordingly, at the June 1976 annual meeting of the Commission the U.S. announced its intention to withdraw from the Convention as of December 31, 1976, to establish the legal condition precedent to preservation of the December withdrawal option. However, we reserved the right to revoke the withdrawal notice if the Commission would agree to meet certain U.S. conditions for management of the fisheries in 1977 and for transition ultimately to full implementation of the new U.S. law.

The Commission was unable to resolve all of the outstanding issues at the annual meeting and consequently agreed to a special meeting, December 1-9, to complete its business. The U.S. Delegation then stated that our Government would review the Commission's decision after the December meeting in light of U.S. conditions and the requirements of U.S. law, and decide whether or not to withdraw from the Convention by December 31. This would of course limit us to a rather short period of time (December 10-30) in which to assess the meeting results, consult as necessary with the industry and key members of Congress, and make our decision.

Technically, only one of the conditions set by the United States -- acceptance by foreign fishing vessels of U.S. registration permits -- is a requirement of the new law. The other conditions include U.S. enforcement, U.S. rule-making with respect to fishery resource management, and U.S. determination of total allowable catch and American harvesting capacity. All these latter are responsive to the intent of the Act and reflect the recognition that a failure to enact effective control over the fisheries after March 1, 1977, through whatever means, would not only prolong the fisheries problems but also create significant domestic political problems.

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A reassessment of the various considerations involved, including developments since the June ICNAF meeting, has raised the question not only of whether or not the U.S. should withdraw at the end of 1976 but also within what guidelines, and at what time, that decision should be made.

Attached is a paper which describes the background of our participation in ICNAF, the effects of the passage of P.L. 94-265 and recent developments in fishery negotiations. The timing of our withdrawal is then discussed in terms of foreign policy, domestic political considerations and the conservation and management of fishery resources, leading to the development of the following four options.

The Department of State has sent diplomatic notes to all the ICNAF member-countries asking them to respond by note indicating their willingness to accept a system of U.S. registration permits if the United States remains in ICNAF through 1977. We also stated in the note that the United States will interpret the reference to areas of national jurisdiction in the ICNAF scheme of joint enforcement as referring to the U.S. fishery conservation zone after March 1, 1977, and will accordingly enforce ICNAF regulations in that zone.

If there is not acceptance of U.S. registration permits by all ICNAF members who fish off our coast we cannot legally remain in ICNAF and must withdraw at the end of 1976, and our choice of options becomes irrelevant. Should all members agree to accept registration permits, we would proceed to the action laid out in whichever of the options has been approved.

OPTIONS

It should be noted that none of the options is risk-free, has a guaranteed outcome, or solves all of the problems. It should also be noted that time limitations will preclude our meeting all National Environmental Policy Act requirements in the event we withdraw from ICNAF. The National Marine

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Fisheries Service indicates that there could be major effects on at least six species of fish if unregulated fishing by Americans and foreigners resulted from a United States withdrawal.

OPTION A

Make a concerted effort to obtain acceptance by all members of ICNAF of U.S. registration permits. If successful, remain in ICNAF through 1977. This would fulfill the legal requirement in the Act for remaining in ICNAF for a transitional year.

Discussion

We would, by staying in ICNAF, resolve for the Atlantic coast the impending problem of not having completed the processing and issuance of permits under governing international fishery agreement (GIFA) arrangements before the U.S. fishery conservation zone becomes effective on March 1, 1977. Additionally, we would postpone by one year the effective deadline for conclusion of GIFAs with ICNAF countries, except for Japan. Therefore any risk of confrontation would then be restricted to the Pacific and Gulf coasts. We would continue the ICNAF system of regulation of both foreign and domestic fishermen which would otherwise be lacking for January and February for all fishermen and beyond March 1 for American fishermen if regulations pursuant to management plans under the new law are not in place. This option would eliminate stock damage from unregulated fishing which could be quite significant.

From a negative point of view, we could be accused by certain elements of the Congress and the fishing industry of "retreating" from all but one of the conditions we laid down earlier. Certainly the Regional Councils for New England and the Middle Atlantic would be upset and would publicly attack the one-year delay in implementation of our unilateral program to establish total catch levels and U.S. harvesting capacity and to allocate among foreigners. Also, it is possible that this could be interpreted by some countries as a signal of a

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certain reluctance on our part to implement the legislation in a vigorous manner. (These countries could, of course, also interpret our action as designed to avoid sterile confrontation by allowing more time for smooth implementation of our law and for transition to the new regime.)

A further consideration is that ICNAF quotas would be higher for some stocks than they would be if we insist on all the conditions we laid down in June or if we set the levels under our domestic law. This would be true for mackerel and herring. Furthermore, certain elements of the Congress would probably accuse the Administration of having delayed negotiation of governing international fishery agreements (GIFAs) deliberately in order to have an excuse for remaining in ICNAF an additional year.

OPTION B

Make a concerted effort to obtain agreement by all ICNAF members that they accept U.S. registration permits. If members accept registration permits, then attempt at the December meeting to gain as many of the remaining three conditions we have laid down as possible. Report the results of that meeting to the Under Secretaries Committee for a decision by the Committee on when the United States should withdraw.

Discussion

The arguments in favor of this course of action are those laid out in favor of Option A and those against it are likewise those in Option A to the extent that we are not successful in obtaining all our previously laid down conditions. The advantage of this variation is that it enables the United States to pursue our expressed goals regarding ICNAF and then make a decision, weighing not only the degree of our success but also any other relevant developments or circumstances at the time.

If this option is selected, it will be necessary for the Under Secretaries Committee to reach a prompt decision on our continued participation.

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Lack of decision would cause our automatic withdrawal since the notice is already on file.

OPTION C

Make a concerted effort to obtain acceptance before the December meeting of U.S. registration permits and of U.S. enforcement in the 200-mile zone. Attempt to obtain the other U.S. conditions at the meeting and if successful on all counts, remain in ICNAF through 1977. If all U.S. conditions are not met, withdraw at the end of 1976.

Discussion

If we pull out under this scenario it will clearly be after having made a major good-faith effort to stay in for a transitional year. We will effectively have placed the onus of our withdrawal on those members who have not accepted our conditions. We will have demonstrated that we have kept our word.

Furthermore, if we do remain in ICNAF under this option, it will be as a result of having obtained the agreement of other members to all of our previously-stated conditions. There would be regulation of both American and foreign fishermen during the months of January and February when there otherwise would be none. These gains should at least mitigate, to some extent, the domestic political reaction to our having foregone the authority we have under the new law to allocate and to our undercutting the role of the New England and Middle Atlantic Regional Fishery Management Councils for 1977.

OPTION D

Attend the December meeting as scheduled, but withdraw at the end of 1976 regardless of the outcome of the meeting.

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Discussion

The uncertainty of a situation involving a popular domestic law and international treaty obligations which are at least to some extent in conflict with the law could be confusing and possibly disruptive. We cannot repeal the law, but we can legally unburden ourselves of the treaty obligations by simply withdrawing. An argument can be made that this would allow the manpower and expense devoted to ICNAF matters to be redirected toward implementation of the domestic law.

Withdrawal from ICNAF would place full control of resource management and allocation of surpluses in U.S. hands as intended by the new law. This would find great favor with the Congress, the industry, and the two Regional Fishery Management Councils concerned.

Since our June statement GIFA negotiations have progressed. Although timing problems remain, the likelihood of confrontation seems lessened although questions remain regarding Japan. Staying in ICNAF will not resolve that problem since Japan also fishes in the Pacific.

From another viewpoint, a decision to withdraw even if the Commission meets our stated conditions for remaining would make the United States appear to be reneging on a promise or a publicly stated position. It would make our problems on March 1 more difficult to cope with and it clearly would face us with two months in which there will be no regulation of fishing off our North and Middle Atlantic coast.

If it is determined that on balance our interests are best served by leaving ICNAF this year, we could follow either of two approaches. We could announce at the beginning of the December meeting that our withdrawal will stand, citing whatever reasons might be appropriate. In a less direct fashion, we could let the meeting run its course and announce our withdrawal at the end of the meeting citing among our reasons for leaving any adverse developments during the course of the

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meeting. The timing of the announcement should be left, as a tactical matter, to the head of the U.S. Delegation to the meeting.

In a review of this issue the Department of Defense, the Chairman of the Joint Chiefs of Staff, the Office of Management and Budget and the Central Intelligence Agency have taken no position, deferring to other agencies with a more direct concern.

The Departments of State, Treasury, Justice, and Interior and the Council on Environmental Quality prefer Option B.

The Department of Commerce and the Department of Transportation (Coast Guard) favor Option D.

I am not optimistic that our conditions for remaining in ICNAF can be realized during the current meeting of the Commission. I believe, however, that a decision to withdraw should be deferred until the Under Secretaries Committee can assess the results of our delegation's efforts under instructions as outlined in Option B.



Charles W. Robinson
Chairman

Attachments:

1. Background-Discussion Paper
2. Environmental Assessment Paper

EXECUTIVE SECRETARIAT
 Routing Slip

TO:

		ACTION	INFO	DATE	INITIAL
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2	DDCI				
3	D/DCI/IC				
4	DDS&T				
5	DDI	X			
6	DDA				
7	DDO				
8	D/DCI/NI		X		
9	GC				
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11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	Asst/DCI				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
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SUSPENSE _____ Date _____

Remarks:

*To 5: Advise this is
FYI?*

10 December 1976

Date

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